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CASH KLEMCHUK POWERS TAYLOR LLP
CAMPBELL CENTRE II
8150 NORTH CENTRAL EXPRESSWAY, SUITE 1575
DALLAS, TX 75206

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| EXAMINER |
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NORMAN, MARC E

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3744

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05/23/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/687,053

Applicant(s)

AHLBERG, BO GUNNAR

Examiner

Dr. Marc E. Norman

Art Unit

3744

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-17 and 20 is/are rejected.
- 7) ☒ Claim(s) 18 and 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-85/86)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 3/26/08 have been fully considered but they are not persuasive. Applicant takes issue with the Examiner's statement that various features of the claim are generally old and well known in the art, saying that if this is true it is odd that the Examiner could not find references to show these limitations. However, the Examiner did provide references. As presented in the rejections, Cartwright teaches the concept of directly sensing a thermally controlled substance. Applicant argues that Cartwright is not analogous art; the Examiner disagrees since the reference is simply used to teach the basic concept of directly measuring and controlling a thermally controlled substance. Whether or not the substance is maintained within a range is immaterial since the reference is not being relied upon to teach this feature. Also as presented in the rejections, Sharon teaches keeping a temperature sensitive substance within a desired temperature range. While Applicant argues that Sharon only keeps the ambient temperature within a range, and not the substance itself, the Examiner notes that keeping the ambient temperature within the range in turn controls the temperature of the substance itself. Further, the concept of directly monitoring/controlling a substance temperature is taught by Cartwright as already discussed. The other two issues that the Examiner indicated as being old and well known are optimizing energy use and the use of wireless controls. Regarding optimizing energy, it is first noted that this is not a positively recited limitation of the claim, but rather simply a functional result of maintaining the temperature within a range. As such, the cited prior art need simply be capable of optimizing energy efficiency. Clearly maintaining a

temperature range as taught by Sharon reduces the need for excessive fluctuations in cooling or heating, and thus improves energy efficiency. Finally, Applicant does not specifically argue that wireless controls are not common or well known; accordingly, that statement is maintained as correct. In view of these responses to Applicant's arguments, the rejections of claims 14, 16, and 17 are maintained and reiterated below.

Applicant presents no new arguments regarding claims 15 or 20. Accordingly, the previously presented rejections are carried forward and maintained below.

Applicant's amendments of claims 18 and 19 overcome the prior art rejections.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 14, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Broussard in view of Cartwright et al. and Sharon et al.

As per claims 14, 16, and 17, Broussard teaches a packaging system for transporting and storing thermally sensitive materials (Abstract, lines 1-2) comprising thermally insulated container 100, temperature control system 900, internal temperature sensors 910, external device (control panel 870), the external device includes a control system (Figure 9) comprising both a heater 920 and a refrigeration system 915 that can be actuated to maintain the materials at a desired temperature, and a rechargeable power supply 655. Broussard does not specifically teach directly measuring the temperature of the materials, specifying upper and lower temperature ranges, optimizing energy use, or remote wireless controls. However, all of these features are generally old and well known in the art. As previously discussed, Cartwright et al. teach using a probe 4 to sense the temperature of thermally controlled substance. Sharon et al. teach the concept of maintaining a temperature sensitive substance within a desired temperature range while being subject to fluctuations in ambient temperature (Paragraph 0011). Finally, official notice is taken that the general desirability of optimizing energy efficiency and the use of wireless remote control devices are both well-known and broadly applicable. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply all of these features to the system of Broussard for the purpose of efficiently protecting the thermally sensitive materials during transport though fluctuating ambient conditions.

Claims 15 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gano, III et al. in view of Broussard and Sharon et al.

As per claims 15 and 20, Gano, III et al. teach a method for storing a temperature sensitive substance comprising placing the substance in a thermally insulated container 100, directly measuring the temperature of the substance (column 8, lines 3-5), and recording and

retrieving the temperatures in relation to time (Figures 26-33). Gano, III et al. do not teach the temperature control activation step. As discussed above, Broussard teaches a packaging system for transporting and storing thermally sensitive materials comprising a control system (Figure 9) comprising both a heater 920 and a refrigeration system 915 that can be actuated to maintain the materials at a desired temperature. Sharon et al. teach the concept of maintaining a temperature sensitive substance within a desired temperature range while being subject to fluctuations in ambient temperature (Paragraph 0011). Similarly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply all of these features to the system of Gano, III et al. for the purpose of efficiently protecting the thermally sensitive materials during transport though fluctuating ambient conditions.

Allowable Subject Matter

Claims 18 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Marc E. Norman whose telephone number is 571-272-4812. The examiner can normally be reached on Mon.-Fri., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on 571-272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MN

/Dr. Marc E. Norman/
Primary Examiner, Art Unit 3744

